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ORIGINAL FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

SEP 17 2013

John A. Clarke, Executive Officer/Clerk
By Amber Hayes, Deputy

5 Attorney for AFS ENTERPRISES LLC

6 SUPERIOR COURT OF THE STATE OF CALIFORNIA

7 COUNTY OF LOS ANGELES

8 CENTRAL DISTRICT

9 AFS ENTERPRISES LLC,

) Unlimited Jurisdiction

10 Plaintiff,

) [The Honorable John L. Segal]

11 vs.

) CASE NO. BC514614

) *First Amended*

13 NATIONAL MANUFACTURING CO.; and
14 DOES 1 to 10, Inclusive

) COMPLAINT FOR CIVIL
PENALTY AND INJUNCTIVE
RELIEF

) (Health and Safety Code § 25249.5)

15 Defendants.

) Hearing on Demurrer
Date: September 23, 2013
Time: 8:30 a.m.
Dept: 50

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19 Plaintiff, AFS ENTERPRISES, LLC, hereby alleges:

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21 **I. PRELIMINARY STATEMENT**

22 1. This complaint seeks to remedy the failure of Defendant to warn persons of exposure to
23 lead, which is a chemical known to the State of California to cause birth defects, or other reproductive
24 harm. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code
25 section 25249.6, also known as "Proposition 65," businesses must provide persons with a "clear and
26 reasonable warning" before exposing individuals to chemicals known to the state to cause cancer or
27 reproductive harm.

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II. PARTIES

2. Plaintiff SHEFA LMV, LLC is considered to be a “person” under Health and Safety Code section 25249.7(d), and brings this action by and through its counsel, Daniel N. Greenbaum.

3. Health and Safety Code section 25249.7(d) provides that actions to enforce Proposition 65 may be brought by “any person in the public interest.”

4. Defendant NATIONAL MANUFACTURING CO. (hereinafter “National”) is a business entity with ten or more employees that sells, or has, at times relevant to this complaint, authorized the manufacture, distribution, or sale of Hardware products under the brand name “National” and other brand names, that contain lead, for sale within the State of California, without first giving clear and reasonable warning.

5. The identities of DOES 1 through 10 are unknown to Plaintiff at this time; however, Plaintiff suspects that they are business entities with at least ten or more employees that have sold, authorized the distribution, or sale of Hardware products under the brand name National and other brand names, that contain lead, for sale within the State of California, without first giving clear and reasonable warning.

III. JURISDICTION AND VENUE

6. This Court has jurisdiction pursuant to California Constitution Article VI, section 10, because this case is a cause not given by statute to other trial courts.

7. This Court has jurisdiction over Defendants, because they are business entities that do sufficient business, have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market, through the sale, marketing, and use of its products in California, to render the exercise of jurisdiction over it by the California courts consistent with traditional notions of fair play and substantial justice.

8. Venue is proper in this Court because the cause, or part thereof, arises in Los Angeles County because Defendant’s products are sold and consumed in this county.

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IV. STATUTORY BACKGROUND

A. Proposition 65

9. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative statute passed as “Proposition 65” by a vote of the people in November of 1986.

10. The warning requirement of Proposition 65 is contained in Health and Safety Code section 25249.6, which provides:

No person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual, except as provided in Section 25249.10.

11. An exposure to a chemical in a consumer product is one “which results from a person’s acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a consumer good, or any exposure that results from receiving a consumer service.” (Cal. Code Regs., tit. 22, § 12601, subd. (b).)

12. Proposition 65 establishes a procedure by which the state is to develop a list of chemicals “known to the State to cause cancer or reproductive toxicity.” (Health & Saf. Code, § 25249.8.)

13. No warning need be given concerning a listed chemical until one year after the chemical first appears on the list. (Id., § 25249.10, subd. (b).)

14. Any person “violating or threatening to violate” the statute may be enjoined in any court of competent jurisdiction. (Health & Saf. Code, § 25249.7.)

15. To “threaten to violate” is defined to mean “to create a condition in which there is a substantial probability that a violation will occur.” (Id., § 25249.11, subd. (e).)

16. In addition, violators are liable for civil penalties of up to \$2,500 per day for each violation, recoverable in a civil action. (Id., § 25249.7, subd. (b).)

17. Actions to enforce the law “may be brought by the Attorney General in the name of the People of the State of California [or] by any district attorney [or] by any City Attorney of a City having a population in excess of 750,000 . . .” (Id., § 25249.7, subd. (c).)

1 18. Private parties are given authority to enforce Proposition 65 “in the public interest,” but
2 only if the private party first provides written notice of a violation to the alleged violator, the Attorney
3 General, and every District Attorney in whose jurisdiction the alleged violation occurs.

4 19. If no public prosecutors commence enforcement within sixty days, then the private party
5 may sue. (Health & Saf. Code, § 25249.7(d).)

6 20. No such governmental action has been pursued against Defendants.

7 **V. FACTS**

8 21. “Lead” was placed in the Governor's list of chemicals known to the State of California to
9 cause reproductive toxicity on February 27, 1987.

10 22. It is specifically identified under three subcategories: “developmental reproductive
11 toxicity,” which means harm to the developing fetus, “female reproductive toxicity,” which means harm
12 to the female reproductive system, and “male reproductive toxicity,” which means harm to the male
13 reproductive system. (Cal. Code Regs., tit. 22, § 12000, subd. (c).)

14 23. “Lead and lead compounds” were placed in the Governor's list of chemicals known to the
15 State of California to cause cancer on October 1, 1992. (Cal. Code Regs., tit. 22, § 12000, subd. (b).)

16 24. National is a manufacturer, distributor and marketer of hardware products¹ for use by
17 individuals in the home and in other occupational endeavors.

18 25. Many of these parts are sold through various retailers located in California for use by
19 citizens of the State of California.

20 26. The products are then sold to consumers under the trade names owned by National for its
21 various brands, including “National,” and using the associated trademarks and trade dress for those
22 brands, including the distinctive retailer labels.

23 27. The process followed in manufacturing the National products for sale to the consuming
24 public must be approved by National, including the “gallery surface bolt” used by individual’s for
25 personal use.

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28 ¹ Including the “gallery surface bolt,” UPC 038613198012, which is the subject of the “**60 DAY NOTICE OF VIOLATION**” dated February 19, 2013 and was served by Plaintiff on Defendants.

1 28. Individuals who purchase, handle or install National products are exposed to lead chiefly
2 through: (1) contact between the brass items and the skin, (2) transfer of lead from the skin to the mouth,
3 both by transfer of lead directly from the hand to mouth and by transfer of lead from the skin to objects
4 that are put in the mouth, such as food and (3) through absorption of lead through the skin.

5 29. Such individuals are thus exposed to the lead that is present on and in National products in
6 the course of the intended and reasonably foreseeable use of those products.

7 30. At all times material to this complaint, Defendant National has had knowledge that the
8 diverter stems contain lead and that skin may come into contact with lead.

9 31. At all times material to this complaint, Defendants have had knowledge that individuals
10 within the State of California handle National brass products that contain lead.

11 32. At all times material to this complaint, Defendants knew that the National products were
12 sold throughout the State of California in large numbers, and Defendants profited from such sales
13 through, among other things, the sale of National products that were sold in California.

14 33. Notwithstanding this knowledge, Defendants intentionally authorized and reauthorized the
15 sale of National products that contained lead.

16 34. At all times material to this complaint, Defendants have knowingly and intentionally
17 exposed individuals within the State of California to lead.

18 35. The exposure is knowing and intentional because it is the result of the Defendants'
19 deliberate act of authorizing the sale of products known to contain lead in a manner whereby these
20 products were, and would inevitably be, sold to consumers within the state of California, and with the
21 knowledge that the intended use of these products will result in exposures to lead within the State of
22 California.

23 36. Defendant has failed to provide clear and reasonable warnings that the use of the products
24 in question in California results in exposure to a chemical known to the State of California to cause
25 cancer, birth defects and other reproductive harm, and no such warning was provided to those individuals
26 by any other person.

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VI. FIRST CAUSE OF ACTION

(Against All Defendants for Violation of Proposition 65)

37. Paragraphs 1 through 36 are re-alleged as if fully set forth herein.

38. By committing the acts alleged above, Defendants have, in the course of doing business, knowingly and intentionally exposed individuals in California to chemicals known to the State of California to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individuals, within the meaning of Health and Safety Code section 25249.6.

39. Said violations render Defendant liable to Plaintiffs for civil penalties not to exceed \$2,500 per day for each violation, as well as other remedies.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that the Court:

- 1. Pursuant to the First Cause of Action, grant civil penalties according to proof;
- 2. Pursuant to Health and Safety Code section 25249.7, enter such temporary restraining orders, preliminary injunctions, permanent injunctions, or other orders prohibiting Defendant from exposing persons within the State of California to Listed Chemicals caused by the use of their products without providing clear and reasonable warnings, as Plaintiffs shall specify in further application to the court;
- 3. Award Plaintiffs their costs of suit;
- 4. Grant such other and further relief as the court deems just and proper.

Respectfully submitted,

DATED: September 17, 2013



By: DANIEL N. GREENBAUM
Attorney for Plaintiff
AFS Enterprises LLC